

ARTICLE VII.

THE DEVELOPMENT OF PREVAILING IDEAS
AS TO THE RIGHT TREATMENT OF
CRIMINALS.

BY THE REV. WILLIAM ALLEN KNIGHT.

THE bearings of this theme are thoroughly practical, being sociological and theological. The first is obvious; the second is clear when one reflects that men's conceptions of divine government are ever shaped by their perceptions of the nature and functions of human government. "On this ground it is impossible," as Principal Fairbairn argues with fine discernment, "to reach any clear or coherent conception of God's rule over men."¹ Yet the fact that it is evermore a factor in shaping men's conceptions of God's government remains, emphasizing the theological bearing of our ideas about the treatment of criminals or delinquents, and calling on the theologian to keep abreast of the vanguard of penological experts. With profound deference be it said that the Oxford Principal himself, standing in the flood of theological light which his own soul has shed, is an eminent example. For he says: "The relations of the sovereign are all legal . . . his instruments most perfect when *least personal*. . . . The legal authority does not *chastise*, only punishes; all its sanctions are penalties, and they are enforced *not to reform or restore* the criminal, but to compel respect and conformity to law."²

¹ The Place of Christ in Modern Theology, p. 436. As to the theological bearing of law, see weighty utterances in Maine's "Ancient Law," pp. 343-347, where he attributes to Roman law the frame of mind, the phraseology, and the kind of reasoning characterizing the theology of the Western Church.

² *Ibid.*, p. 437. It should be noted that Dr. Fairbairn does not here say

Is this a correct statement of the spirit prevailing in modern penology? The following pages are meant to make a presentation of developments which show that it would have been correct in times past, but is not now.

MacKenzie, in his "Social Philosophy,"¹ says: "To describe the genesis of a thing, especially when it is a living thing, is often the best method of defining it." This is the method here adopted.

"Criminal law," in the language of Frederick H. Wines, "has been slowly and painfully evolved from human consciousness, in response to the various historical exigencies of the race."² Professor Henderson generalizes the facts thus: "The modes of punishment correspond to the social purpose. Presented in historical order . . . the penalties are distinctly marked as vengeance, social protection, and reformation."³ Dr. Wines outlines four stages in the evolution of criminal law: "The first was the era of vengeance or retribution; the second, that of repression [Henderson's social protection]; the third, that of attempted reformation and rehabilitation; the fourth, of which we see as yet but the early dawn, is that of prevention."⁴

that human government is of purely legal character as a matter of fact. He says, "There is no absolute antithesis between sovereignty and pater-
 nity," and adds that "the argument which opposes the two proceeds from the basis not of nature or ideal truth, but of the policies and expediencies and experiments of our perplexed social and civil life" (page 436). But he *implies* that human governments do now give crime a purely legal treatment, as when he says, on page 467, "the judge regards the criminal only as a person against whom the law is to be vindicated, but the father," etc. By overlooking the developments in modern governmental penology, is not his noble argument for the paternal character of God's government deprived of most effective vantage-ground?

¹ Page 66.

² Punishment and Reformation, p. 2.

³ Dependents, Defectives, and Delinquents, p. 197.

⁴ Punishment and Reformation, p. 6. The author amplifies this outline on page 25, and makes the important remark, that these four methods are not mutually exclusive.

In consequence, what is deemed criminal varies greatly in different times and lands. The list of obsolete crimes is astounding, and the catalogue of present punishable acts would make the founders of the American Republic stare, to say nothing of medieval and ancient opinion.

Under the *lex Julia* of Augustus, celibacy was a crime with penalties, the law being so framed as to show the social purpose of maintaining the state by offspring. The absence of that social purpose, or at least the recasting of it, is the bulwark of the bachelor's social peace to-day.

"Talk about blue laws," Dr. Parkhurst once exclaimed in pleading against New York corruption, "In the South Sea Islands a law to check the consumption of broiled missionary would be complained of as blue law!"

What would the framers of the Declaration of Independence have thought of a notice in a stage-coach that spitting on the floor was punishable by law? What would be thought of it to-day in the wild West? But does any rational man care to test its constitutionality in a Boston electric-car? So is it, that 'the history of crime and punishment is an index to historical changes in social and political organization.'

In general, crime is defined as 'an act or omission in respect of which legal punishment may be inflicted on the person who is in default.'¹

The *lex talionis* is the most ancient principle of laws against crime. This law is explicitly stated in the Mosaic code.² But that system of laws really restricted the operation of revenge, this fact being of large worth in characterizing them, since under many ancient codes the only limitations were the physical ability and the vengeful zeal of the injured person or his kin or his friends.

¹Sir James F. Stephen, *History of Criminal Law in England*, Vol. i. p. 1.

²Ex. *xxi.* 22-25; Lev. *xxiv.* 17-21.

So late as the beginnings of British history, "The really efficient check [in England] upon crimes of violence was the fear of private vengeance which degenerated into private war, blood feuds, and anarchy."¹ Even in the laws of Alfred the Great, revenge is the dominant principle, though various limitations are set up; among them, a quaint not to say grotesque restraint: "If a man have such power that he can beset his foe and besiege him within, let him keep him within for seven days, and attack him not if he will remain within."²

Moses and Alfred the Great are centuries within the historic horizon swept by the prevalence of revenge or retaliation as the authorized method of dealing with criminals; so too are Joseph, the dream-interpreter in an Egyptian prison, centuries beyond Moses, and John Bunyan, the dreamer in an English prison, centuries this side of Alfred. But a century after Bunyan, John Howard was to come to that same English prison, and dream, and toil, and start a new era.

Offenses were thought of in antiquity not so much as crimes, that is, as against the state, but rather as wrongs done to individuals for which compensation was required, and sins for which an equalizing punishment was to be made to please Deity. That this was true of Hebrew law is a fact familiar to discerning students of the Old Testament. It was true also of the various bodies of archaic law, including those of the early Athenian and Roman states. "The conception of offense against God produced laws against sins; the conception of offense against one's neighbor produced laws against wrongs or torts. But the idea of offense against the state or aggregate community did not at first produce a true criminal jurisprudence."³

A great idea as to the treatment of criminals, which

¹ Stephen, *History of Criminal Law in England*, Vol. i. p. 60.

²*Ibid.* ³Sir Henry Maine, *Ancient Law*, p. 357.

which became operative and indeed dominant with the growth of the notion of the state as such, was that of repression, or social protection.

Once admit the conception of community, of the state as distinct from and transcending the idea of the individual, and it follows, *per saltum*, that the state *for its own sake* will undertake to apply penalties, in order to secure welfare, to guard against disorder, to uphold its authority. For now *the public* could be wronged, *the state* suffer injury by damaging the conditions of its peace and prosperity, by infraction of its laws, by knifing its life. The state once conceived as the general life constituted into authoritative form for purposes of government, the idea of governmental and social protection will make repression a factor in the treatment of crime. Retaliation and compensation might still be operative, might indeed dictate the means used; but the end in view becomes radically different, and goes far to shape the treatment prescribed. Comparison of the Mosaic code with that earliest compilation of the laws of the Roman Republic, the Twelve Tables, will illustrate this fact. The first was for a theocracy, the dominant idea of the function of government being the maintenance of Jehovah's sovereignty. True, we unmistakably trace here a vast sociological purpose, involving the selection, separation, unique development, and transforming differentiation of a nation of destiny, which underlies the religious, tribal, industrial, domestic, educational, penological, and political prescriptions of the Mosaic laws. This purpose is seen to be served *scientifically*, when the details of law are studied in the light of the social conditions amid which they were applied. Their arbitrary appearance often vanishes when they are so contemplated.¹

¹ An eminent instance is the requirement of circumcision. Nothing *seems* more arbitrary; at first sight one is inclined to deem it about as unnatural, inconsiderate, and queer as any universal requirement which
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An instance is the prohibition of the custom, so widespread among the ancient tribes of men, of taking revenge on the relatives of a criminal, viewing it in connection with that arrangement for forcing the flow of revenge into restraining channels by the provisions centering in the considerably distributed Cities of Refuge. The enactments concerning compensation to be made to a wronged person, and substitution toward Jehovah, are unquestionably of this character, that is, they are scientifically suited to serve an end for which the Hebrew people had their being. But through all it is clear that honoring the will of Deity is the supreme end of government, the nature of crime and the modes of punishment being shaped accordingly.¹

But turn to the Twelve Tables of the early Roman state. All is different. Retaliation is still operative by allowance;² compensation is very prominent; but repression of crime for the protection of the state, for the public welfare, is the ruling idea. That it is for the state is apparent from the list of crimes.³ That repression was the

could be imagined. But the fact is, it was thoroughly rational, a practical and effective means to an end. It was both sanitary and moral in its effects; it was conducive to both constitutional and moral welfare, and by contributing to normal sexual conditions was conducive to social welfare. In evidence of this, it is conclusive to refer to the fact that physicians are now making a very considerable use of circumcision in the care of male babes, and as a remedy for disorders in boys and even in men. The writer has interviewed numerous physicians, in various sections of the United States, who so practise, and have given him their names as ready to testify to the scientific character of circumcision as stated in this note.

¹ See Lev. xviii.-xxvii., where the words, "I am the Lord your God," are reiterated some fifty times, in almost identical form, as the concluding clause of enactments concerning a great variety of crimes.

² "The law of the Twelve Tables admitted two limitations on retaliation: First, it never condemned to retaliation, except when the plaintiff could not be satisfied in any other manner; secondly, the payment of damages." Montesquieu, *Spirit of Laws*, Bk. vi. p. 100.

³ See Stephen, *History of the Criminal Law of England*, Vol. i. p. 9 *et seq.*, where twenty-six offenses are enumerated. Disturbance in the

formative idea is clear from the ignominy and horror given to penalties. Throwing from the Tarpeian rock is a recurring penalty. The murderer of a father, a mother, a child, a brother or a sister, was cast into the Tiber or the sea in a sack, and a cock, a viper, a dog, and a monkey were successively made the criminal's companion in the hideous struggle in the submerged sack.¹ This was deterrence, repression, social protection, unalloyed by any thought of Deity or rational revenge. As the idea of the state grew, the enhancement of humanity resulted; plebeians in power gradually did away with such inhumanity; commingling of conquered peoples of culture infused finer feelings. The head of the English prison system in the end of the nineteenth century has given this judgment of the result of this process of development: "The criminal laws which no doubt the Romans left in their [British] Islands [in the first century] . . . seem to have arrived at a level of humanity and good order which was not again touched in England till long after the present century had begun."²

Turning away from the matured perfections of Roman criminal law, we plunge once again into primitive social conditions, to view the ideas underlying the treatment of criminals in early England. The *lex talionis* was prevalent, as we have seen. The Teutonic tribes who came from the northland of the continent to make the island of the Briton Angle-land, brought in laws marked by the 'excessive extension of pecuniary compensation, and the minute care with which they set a tariff price on all crimes.' With them, ordinarily, the relatives did not kill the murderer of one of their number, but instead, they prosecuted judicially;

city at night, giving false evidence, cutting or causing to be grazed a crop raised by plowing, and such like offenses were punishable by death.

¹ Stephen, *History of the Criminal Law of England*, Vol. i. pp. 19, 20.

² Sir Edmund Du Cane, *The Punishment and Prevention of Crime*, p.9.

and this was a duty, as blood revenge had been formerly, neglect of which was itself punishable among some; in France, for instance, confiscation of the patrimony of those failing to prosecute the murderer of a father. A certain scale was fixed,—so much for a nobleman, so much for an ordinary free man, so much for the different kinds of slaves, a carpenter, a swineherd, and so on. Under Alfred, if a man cut off an enemy's thumb, he had to pay *to the damaged person* twenty-five shillings; for a first finger fifteen, a second finger nine, a third six, and the little finger five shillings. A scale of compensation was established for theft, debt, abduction, adultery, seduction, with revenge as the alternative in aggravated instances.¹ Clearly the idea of meting out penalty to atone for a wrong, is in all this supplanted by that of compensating the victim. This principle of compensation appeared in the earliest times; but here it is based on a social, rather than a religious, conception of crime; the wronged *man* is the point of reference, rather than wronged *Deity*. The germ of government of the people *for* the people, is hidden in this idea of the treatment of criminals.

Trial by combat was introduced by William the Conqueror for the settlement of doubtful cases. Then certain persons were invested with the right to inflict immediate punishment on the one who injured them personally. Then a crude police was formed corresponding to the country districts of England, of which our county sheriff system is descendent, their procedure being to arouse the people of a district to chase a thief or other criminal, with which we may compare our sheriff method of *impromptu posse comitatus*.

Rude courts were formed, which were public meetings attended by men of certain classes, with a representative

¹ Maine, *Ancient Law*, p. 358; also Wines, *Punishment and Reformation*, pp. 37, 38.

judicial committee of twelve. The proceedings were somewhat dramatic;¹ but we can detect in those meetings germs of modern court-room methods among English-speaking people.

Prisons have been ever present throughout human history; many of them are famous by name; but imprisonment was not a mode of punishment until recent times. The hardships of confinement were suffered incidentally while awaiting judgment or execution of judgment. It was so usually even in the Middle Ages, although confinement under deadly conditions was often a mode of destruction, as in the oubliettes of France. The name of Queen Elizabeth, which stands for so many epoch-making facts, is perhaps the one to mark the commencement of the developments which made imprisonment itself a penalty. Thus attention was turned to the prison itself at length, and in consequence it has been transformed into the humane and scientific agency for reforming and transforming the prisoner through beneficent means. But stay—we go too fast. The horrible Sinsbury copper-mines—abandoned holes in the ground reeking with foulness, and disgusting with shameless inhumanities and loathsome indecencies—were a state prison in Connecticut until some seventy years ago!²

In Queen Elizabeth's time, bridewells and houses of correction were instituted, at first rather as hospitals or charities than for actual punishment; but soon they came to be used as places of forcible confinement. Under James I. it was enacted that one of these should be established in every county, and provided with mills, turus, cards and

¹ Stephen, *History of Criminal Law of England*, p. 73.

² For a circumstantial description of this and other prisons, and an astounding account of the treatment of prisoners in the early decades of the republic founded on the rights of man, see McMaster's *History of the People of the United States*, Vol. i. pp. 98-102.

similar equipment for setting idle people to work. Early in the eighteenth century the practice became established of committing criminals of all classes to those houses, and so the general mode of punishment by imprisonment was developed.

But that particular form of imprisonment with hard labor known as penal servitude, "has a different history to that of ordinary imprisonment, and the present system cannot be understood without a knowledge of the transportation system, from which it is derived."¹

Transportation was introduced in the reign of the second Charles, at first being simply banishment from the realm, without assigning locality or compulsory labor.

In the time of the first two Georges, courts were empowered to make over certain classes of offenders "to any such person as shall contract for the performance of such transportation, and to his assigns for such terms of years as the Act empowers, and they shall have property and interest in the service of such person for such term of years." This clearly was a sort of slave-trade. By the War for Independence, transportation to America was stopped. In the emergency occasioned by thus throwing back on the home country the convicts of whom she had been easing herself so cheaply, a dramatic miscarriage of human progress took place. Parliament ordered justices throughout the country to provide buildings for the increased body of convicts in the bridewells and houses of correction. Pending the provision of these permanent quarters, Parliament authorized imprisonment in two old hulks at Woolwich, and as the justices delayed or disobeyed, additional hulks were afterward provided at other royal dockyards. The infamous hulk system was established, therefore, as a merely

¹ Sir Edmund Du Cane, *Punishment and Prevention of Crime*, p. 110. The forty pages following this statement give an account of the transportation and "hulk prison" schemes of England.

temporary expedient, the intention at the time having been to provide penitentiaries with several of the more enlightened, modern features.

The significance of this fact is well put by the head of England's present system of prisons: "If the penitentiary system had been adopted then, instead of the hulk system, it is impossible to tell the amount of crime and corruption which would have been avoided, or the benefit that might have resulted both to England and her colonies." But the temporary expedient grew to be prevalent until, ere King George the Third went mad, it became a specific legal sentence.

This expedient, adopted in 1776, lasted over eighty years.¹ Moral depravity shut up in those hulks was untellable. "Hulk fever" developed. Mortality was toward thirty per cent per annum. Now in English convict prisons it is about thirteen in the thousand per annum.

It was in 1787 that an expedition of convicts, sentenced to transportation, was first started for Australia, the use of American colonies for this purpose having been stopped, as already mentioned. The nefarious results of this system accumulated on sea and land, until, in 1838, a parliamentary committee condemned the system itself, and recommended prisons and imprisonment instead.

In 1846 Mr. Gladstone decided, that, at all events, transportation to Van Dieman's Land must be suspended. The discovery of gold in Australia did much to force the withdrawal of the practice there. So step by step it came about that penal servitude in prison was in 1857 made legal, instead of transportation. In ten years more (1867) the festering expedient was practically abandoned, and England's convict system, combining the principles of deterrence from crime, and reformation of the offender by prison agencies, grew apace.

¹ The hulks were used in England until 1857, and at Gibraltar until 1875.

Facing now the modern prison system, with reformation of the criminal as its prevailing idea, a single fact needs to be fixed in mind. It had long been in men's thought. The Hebrew seer voiced it: "Have I any pleasure in the death of the wicked, saith the Lord God; and not rather that he should return from his way, and live."¹

Seneca,² in an age of the most merciless and capricious modes of punishment, held that punishment is to protect society by removing the offender, to reform the punished, and to render others more obedient. Plato has it that the right aim in punishment is not merely to render the guilty their due, but at the same time to make them better. He even proposed, as an ideal, that there should be three grades of prisons constructed,—one for persons under arrest, one for minor offenders, and one for great criminals.³ This was a marvelous gleam of genius actually lighting the path of progress considerably ahead of the point reached by the most advanced states of Christendom at this hour.⁴ Aristotle defined punishment as "the specific of the soul." Augustine held, that, however atrocious crime may be, it should not awaken anger and the desire for revenge, but should rather be looked on as an inward malady which it is our duty to heal.⁵

¹ Ezek. xviii. 23, 32; also a notable declaration of this idea in Lev. xxvi. 13-45.

² Compare Epistles on Anger, on the Treatment of Servants (near close), on the Difference between Exhortatory and Dogmatical Philosophy.

³ The Laws, Bk. x. sect. 15; Bk. xii. sect. 1; Republic, Bk. i. chap. 17.

⁴ As an instance, take the abominable, crime-breeding management of American county jails and city prisons. No man can study this subject by a week's observation without a sense of disgust at the indiscriminate exposure of one class of prisoners to another, and all to the common grossness of surroundings adjusted to the "common drunks" and the "tramp lodgers." The methods of many police-court prisons and county jails are atrociously out of keeping with the spirit pervading other public institutions in our time.

⁵ Reply to Faustus the Manichæan, Bk. xix. sect. 25; also, Against the Epistle of Manichæus called Fundamental, sects. 1, 2.

But these were random rays of genius piercing the black pall of revenge or retribution which has hung over the criminal jurisprudence of the centuries. They were the foregleams of the dawn. The day may be said to have broken, when, in 1704, Pope Clement XI. founded the Hospital of St. Michael. That word "hospital" connotes Augustine's idea of crime as a malady to be cured. It is in keeping with the phrase in our theme "the treatment of delinquents." Over the door of this "hospital," Clement put this inscription: "For the correction and instruction of profligate youth, that they who, when idle, were injurious may, when taught, become useful to the state." And in the hall where the boys were set to work was inscribed: "Parum est coercere improbos poena, nisi probos efficias disciplina." This motto is the corner-stone of the prison, or, to use the specific descriptive term, penitentiary system of to-day. It must be remembered that the St. Michael institution was an orphanage, an infirmary, and a home for the aged, as well as a reformatory; yet the principle inscribed on its workroom wall, "Little is it to check bad persons by punishment, unless you make them good by discipline," is the essence of the idea as to the right treatment of criminals which is prevailing in the minds of penologists in the latter half of the nineteenth century. But between that hospital of St. Michael at Rome, at the opening of the eighteenth century, and the New York Reformatory at Elmira, at the close of the nineteenth century, what horrors, what blind gropings, mark Christendom's treatment of criminals!

Three names, penned in illuminated letters on the pages which record the story of this period, will serve to illustrate the course and cause of the development attained. In 1764, at Milan, the Italian Beccaria published his little book "An Essay on Crimes and Punishment."¹ This book

¹ The writer has at his hand, as he writes, a copy of this essay, printed

speedily passed, through translations, into the various languages of Christendom, and "perhaps no book on any subject was ever received with more avidity, more generally read, or more universally applauded."¹ Its tone was dispassionate, humane, discriminating, illuminating, forceful. Nine years after its appearance, an Englishman, dull at books, eccentric, but a dauntless zealot in traveling and studying human society, was made sheriff at that Bedford jail where, a hundred years before, John Bunyan had dreamed his "Pilgrim's Progress." This man was John Howard. This Englishman and the Italian Marquis Beccaria, though so far as evidence goes they did not know each other, were the two men who simultaneously stood up with might against the wretched treatment accorded criminals in their day—"one an Englishman, one an Italian; one a Protestant, the other a Catholic; one a commoner, the other a nobleman"; one a man of self-wearing, martyr-like zeal, the other a thinker among his books.

Growing to early womanhood during the last years of these two men, Elizabeth Fry began that zealous activity in behalf of prisoners which made her known as "the female Howard." The transformations this young Friends preacher achieved among the wretched female prisoners at Newgate, her journeys to European prisons for the same purpose, the ideas she put to the test as to the right treatment of criminals, make her name a fit member of a trinity with Howard and Beccaria. A public meeting was held at her death, the lord mayor of London presiding; and the monument they reared was "The Elizabeth Fry

during the lifetime of Beccaria with a commentary by Voltaire, having found it in a heap of cast-away articles on the estate of an American public man long dead. The present occupant handed him the yellow book as a trifle, after a puzzled attempt to read the title-page. The preface, written within eighteen months of the first publication, speaks of no less than six editions having been issued in the original language.

¹ Preface of the edition of the essay referred to in preceding note.

Refuge," for destitute women set free from prison. Ah, what wealth of meaning is in such a monument to one born in 1780! Even yet, such a monument even in an American city, would speak volumes in proof of the enlightened courage and wisdom of the one whose life suggested it!

These three, then, were chief in overthrowing the idea that extreme severity was the most effective way to treat criminals. Baron Montesquieu had so argued in 1748.¹ He held that, "from impunity of criminals, and not from the moderation of punishment," comes the spread of crime.

This idea is thoroughly believed by the representative penologists of the modern school.

The late warden of the Jackson prison (Michigan) sketched the new system of thought as to the treatment of criminals, by contrast with the old, as follows: "One is coercion and force, the other is persuasion and education. One seeks to govern by fear, . . . the other by intelligence, and so patiently labors to teach. One practically establishes a scale of punishment for each offense . . . to pass the prisoner directly from violation to an amount of suffering that shall compensate. The other attempts to discriminate in motives and feelings and character, and only punishes when necessary to obtain compliance."² This practical prison manager is no mere theorist, but actually handled on this basis men who were uncontrollable by treatment dictated by the old ideas.

He says elsewhere, "If the prisoner refuses to be persuaded, if it is impossible to educate him to obey, suffering must be inflicted. And now another essential separation from the principle of a punitive prison must become operative; and the prisoner must understand that there is

¹ Montesquieu, *Spirit of Laws*, Bk. vi. p. 91.

² Report of National (U. S. A.) Conference of Charities and Correction for 1890, p. 299.

nothing vindictive in the operation; that his punishment is not retributive nor exemplary, but simply correctional; that it is not for violation, but to secure future compliance; that it will continue until compliance is had . . . and will then stop; that he must himself determine the extent; . . . that he forces on himself the suffering which the warden regrets and dislikes to administer." ¹

This view is stoutly vindicated by Professor Collins, of Cornell University, thus: "The object of punishment is the improvement of the offender. This is the fundamental principle of modern prison science. . . . To those who hold the retributive theory of criminal punishment, and demand pain and suffering for the offender proportionate to the heinousness of the offense, we say that there is no pain and suffering more severe than . . . that the lazy man . . . be compelled to work, the drunkard compelled to keep sober, . . . the pressing and crowding of the man of deformed and dissolute habits into the straight-jacket of righteous forms of living. To those who declare the object of criminal punishment to be the protection of society from the criminal, we say that the transformation of the criminal into a serviceable member of society is the only effective protection of society against him." ²

"Crime," says Sir Edmund Du Cane, "may be compared with physical disease, and the mode of proceeding for the repression of the one is in principle the same as for the other. The most effective mode is to remove the causes. But when this mode fails, or when we omit to apply it, we are obliged for the protection of society to resort to such methods of curing it as may prove most effectual. According to the principles which have been long accepted in England, these methods must be founded on the combination of penal and reformatory elements ap-

¹ Report of National (U. S. A.) Conference of Charities and Correction for 1890, p. 300.

² *Ibid.*, for 1891, p. 214.

plied in their proper circumstances and in their due proportion." ¹

Major McClaughry, warden of Joliet (Illinois) Penitentiary, and afterwards chief of the Chicago police, makes this summary: "Criminality is a kind of disease; crime is the symptom. Some are incurably afflicted, others curably. There are chronic and temporary conditions, violent and latent states. It is contagious and sometimes epidemic."²

For the curing process based on this conception of crime an elaborate science of prison construction and management has been developed, receiving its earliest expression under the democratic influences of the United States, and passing thence, through European commissions of investigation, to France, England, Prussia, Belgium, Sweden, Denmark, Norway, Holland, and other countries, where in turn the development of the new science has been promoted. The details of this science, which has changed the prison to the penitentiary, are too extensive to be set forth here.³ Our theme, indeed, has to do with the prevailing *ideas* underlying the treatment of criminals. As to criminals in general, the ideas prevailing are: that there should be scientific consideration of causes, constitutional and conditional; then reformation, moral transformation, by attention to physical, social, mental, and moral means. An interesting illustration is found in these words: "The close relation of abnormal physical conditions to moral and intellectual obliquity has been startlingly demonstrated by

¹ Punishment and Prevention, p. 1.

² Quoted in Boies' Prisoners and Paupers, p. 184. For a striking statement of General William Booth, of the Salvation Army, who, of all men, has given proof of sane views of crime and the way to treat criminals, a statement describing certain types of criminals as having "become lunatic, morally demented," see *Ibid.*, p. 179.

³ The chief exemplification in the United States is at Elmira, N. Y., opened in 1876. For a full description see Wines, Punishment and Reformation, pp. 192-228.

the course of scientific experiments upon living men which has been carried on for the last five or six years at the Elmira Reformatory . . . men so overloaded with animalism . . . that they were unable to perform the ordinary task-work of the shops, and could do next to nothing at the reformatory schools, were taken and put through a course including Turkish baths, massage, special diet, gymnastics, and exercises demanding a constantly increasing quickness and alertness of both physical and mental action. The mental and moral transformation resulting has been even more conspicuous than the physical. After from six to nine months of such treatment, these men, with but few exceptions, started on their work in both shop and school . . . and progressed regularly through the curriculum of industrial and intellectual education. New and laudable ambitions were aroused, the sullen temperament disappeared, the souls of the men were revived as well as their minds and bodies."¹ Of course this has to do with but one side of the problem of the right treatment of criminals. Would it be worth anything in the treatment of a speculating bank cashier or a seducer? Perhaps not; probably in many cases much more than the unscientific thinker can understand. However, this illustrates the conception of crime, and the ideas determining its treatment by expert penologists.

These ideas are *prevailing*; their spread is in process. It is frightful to turn from contemplation of their intelligent and humane application by great prison wardens, to witness the ignorant and medieval coarseness, the bungling and fumbling and mawkish tinkering of characters going on in many prisons of detention attached to courts of first appearance after arrest, and in county jails. One who

¹ Professor Collins, of Cornell, in 1891. See report of National Conference of Charities and Correction, pp. 216-217.

speaks out of much practical experience in office,¹ testifies: "Our criminal court and jail systems are a reproach upon our intelligence, a disgrace to our civilization, an unnecessary extravagance in our social economy, a curse upon our philanthropy and our religion, and an outrage on our humanity."

But the prevailing ideas as to the right treatment of criminals will reach these dark places sooner or later. As in medical science the mastering thought of our day is to search into the cause and conditions of disease, and then prevent, check, or cure by removing or overcoming causes and conditions, so is it precisely in criminal science.² And as *reformation* comes to be the watchword, men's minds turn the more expectantly to another word rising in the horizon of their thought of crime. It is the word *Prevention*. In the pungent phrase of a bold student of crime, the real problem is "not so much how to keep the children out of hell by and by, as to keep hell out of the children here and now."

¹ Henry M. Boies, *Prisoners and Paupers*, p. 6.

² "The only effective control of the prisoner is self-control, and to cultivate this in our women every incentive to well-doing is brought to bear, and every discouragement to evil-doing is kept before them."—Mrs. Ellen C. Johnson, at the Women's Congress in London, June 27, 1899. For twenty years she has been a prison expert in Massachusetts, much of this period being at the head of the Women's Reformatory. This was her last public utterance. She died the next day.